



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective December 2015,

ADOPTED

The Committee has adopted new and amended instructions for use in cases where the defendant is charged with operating a vehicle while intoxicated to accommodate “high bodily alcohol content” allegations. Some instructions were added, some were amended and one re-identified from a verdict form to a substantive instruction. Verdict forms were amended and added, as well. The changes involve M Crim JI 15.1 (amended), 15.1a (new), 15.5 (amended), 15.6 (amended), 15.6a (re-identified and amended), 15.7 (amended), and 15.7a (new).

M Crim JI 15.1 Operating While Intoxicated [OWI]

[The defendant is charged with / You may also consider the less serious charge of] operating a motor vehicle [*Choose from the following:*]

- (1) with an unlawful bodily alcohol level; [and/or]
- (2) while under the influence of alcohol; [or]
- (3) while under the influence of a controlled substance; [or]
- (4) while under the influence of an intoxicating substance; [or]
- (5) while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

History

M Crim JI 15.1 (formerly CJI2d 15.1) was added in 1990. Amended October, 1993; amended June, 1995 to reflect statutory changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

M Crim JI 15.1a Operating With High Bodily Alcohol Content [OWHBAC]

(1) The defendant is charged with operating a motor vehicle with a high bodily alcohol content. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.

(2) First, that the defendant was operating a motor vehicle on or about [state date]. Operating means driving or having actual physical control of the vehicle.

(3) Second, that the defendant was operating a vehicle on a highway or other place open to the public or generally accessible to motor vehicles [, including an area designated for parking vehicles].

(4) Third, that the defendant operated the vehicle with a bodily alcohol content of 0.17 grams or more per [100 milliliters of blood / 210 liters of breath / 67 milliliters of urine].

Use Note

Lesser offense instructions for the offenses of operating while intoxicated and operating while visibly impaired involving the consumption of alcohol must be given. See appropriate provisions of M Crim JI 15.1, 15.2, 15.3 and 15.4.

History

M Crim JI 15.1a was added in December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

M Crim JI 15.5 Factors in Considering Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

As you consider the possible verdicts, you should think about the following:

[Choose appropriate paragraphs:]

(1) What was the mental and physical condition of the defendant at the time that [he / she] was operating the motor vehicle? Were the defendant's reflexes, ability to see, way of

walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)¹]?

(2) You may also consider bodily alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?

(3) Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?

(4) One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

[Choose (5)(a) or (5)(b):]

(5) If you find

- (a) that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find that the defendant was operating a motor vehicle with a high bodily alcohol content, whether or not it affected the defendant's ability to operate a motor vehicle.
- (b) that there were 0.08 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant guilty of operating a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected the defendant's ability to operate a motor vehicle.

(6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.²

(7) In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] was operating the motor vehicle.

Use Note

Read both (5)(a) and (5)(b) if operating with a high bodily alcohol content is charged. Otherwise, read only (5)(b).

¹ Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

² If the evidence warrants, the following can be added to this paragraph (6): “However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant’s bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time that [he / she] operated the motor vehicle.”

History

M Crim JI 15.5 (formerly CJI2d 15.5) was amended October, 1993, and June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; and amended September, 2010, to reflect the statutory changes in 2008 PA 463, effective October 31, 2010. The Use Note to this instruction was added by the committee in May, 2008. Amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Wager, 460 Mich 118, 594 NW2d 487 (1999); *People v Campbell*, 236 Mich App 490, 601 NW2d 114 (1999); *People v Smith*, 182 Mich App 436, 453 NW2d 257 (1990); *People v Nicolaides*, 148 Mich App 100, 383 NW2d 620 (1985); *People v Carter*, 78 Mich App 394, 259 NW2d 883 (1977), modified, 402 Mich 851, 261 NW2d 182 (1978); *People v Krulikowski*, 60 Mich App 28, 230 NW2d 290 (1975); *People v Kozar*, 54 Mich App 503, 221 NW2d 170 (1974).

M Crim JI 15.6 Possible Verdicts Where OWHBAC Is Not Charged

There are three possible verdicts:

- (1) Not guilty, or
- (2) Guilty of

[Choose appropriate paragraphs:]

- (a) operating a motor vehicle with an unlawful bodily alcohol level; [or]
- (b) operating a motor vehicle while under the influence of alcohol; [or]
- (c) operating a motor vehicle while under the influence of a controlled substance; [or]

- (d) operating a motor vehicle while under the influence of an intoxicating substance; [or]
- (e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹
- [(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)¹], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.]²

[or]

- (3) Guilty of operating a motor vehicle while visibly impaired.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² Use bracketed paragraph (2)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaidēs*, 148 Mich App 100; 383 NW2d 620 (1985).

History

M Crim JI 15.6 (formerly CJI2d 15.6) was CJI2d 15.7. Amended October, 1993; amended June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2010, to reflect the changes in 2008 PA 463, effective October 31, 2010; amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Nicolaidēs, 148 Mich App 100, 383 NW2d 620 (1985).

M Crim JI 15.6a Possible Verdicts Where OWHBAC Is Charged

There are four possible verdicts:

- (1) Not guilty, or
- (2) Guilty of operating a vehicle with a high bodily alcohol content, or
- (3) Guilty of

[Choose appropriate paragraphs:]

- (a) operating a motor vehicle with an unlawful bodily alcohol level; [or]
- (b) operating a motor vehicle while under the influence of alcohol; [or]
- (c) operating a motor vehicle while under the influence of a controlled substance; [or]
- (d) operating a motor vehicle while under the influence of an intoxicating substance; [or]
- (e) operating a motor vehicle while under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance].¹
- [(f) If you all agree that the defendant operated a motor vehicle either with an unlawful bodily alcohol level or while under the influence of [alcohol / a controlled substance / an intoxicating substance / a combination of (alcohol / a controlled substance / an intoxicating substance)], it is not necessary that you agree on which of these violations occurred. However, in order to return a verdict of guilty, you must all agree that one of those violations did occur.]²

[or]

- (4) Guilty of operating a motor vehicle while visibly impaired.

Use Note

¹ Select the appropriate combination of alcohol/substances based on the evidence presented.

² Use bracketed paragraph (3)(f) only if the defendant is charged with both unlawful bodily alcohol level (UBAL) and operating while intoxicated (OWI). This paragraph specifically states that the jury need not be unanimous on which theory applies as long as all jurors agree that the defendant violated MCL 257.625 in at least one fashion. See *People v Nicolaidis*, 148 Mich App 100; 383 NW2d 620 (1985).

History

M Crim JI 15.6a (formerly CJI2d 15.6a) was adopted February, 2010, to address the typical drunk driving case. It was re-identified as a substantive instruction in December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case Law

People v Nicolaides, 148 Mich App 100, 383 NW2d 620 (1985).

M Crim JI 15.7 Verdict Form Where OWHBAC Is Not Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2) or (3).

- (1) ☐ Not guilty
- (2) ☐ Guilty of Operating While Intoxicated
- (3) ☐ Guilty of the less serious offense of Operating While Visibly Impaired

History

M Crim JI 15.7 (formerly CJI2d 15.7) was CJI2d 15.8; amended October, 1993; amended September, 2003, to comply with the special verdict requirements of 2003 PA 61, MCL 257.625(18)-(19), effective September 30, 2003; amended December 2015 to be in accord with the holding in *People v Nicolaides*, 148 Mich App 100, 383 NW2d 620 (1985).

Reference Guide

Statutes

MCL 257.625

Case Law

People v Nicolaides, 148 Mich App 100, 383 NW2d 620 (1985)

M Crim JI 15.7a Verdict Form Where OWHBAC Is Charged

Defendant: _____

POSSIBLE VERDICTS:

You may return only one verdict on this charge. Mark only (1), (2), (3) or (4).

- (1) ☐ Not guilty
- (2) ☐ Guilty of Operating with a High Bodily Alcohol Content
- (3) ☐ Guilty of the less serious offense of Operating While Intoxicated
- (4) ☐ Guilty of the less serious offense of Operating While Visibly Impaired

History

M Crim JI 15.7a was added December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625